REMARKS

This paper is presented in response to the Office Action. Claims 1-5, 7-11, and 27-28 are pending.

Reconsideration of the application is respectfully requested in view of the following remarks. For the Examiner's convenience and reference, Applicants' remarks are presented in the order in which the corresponding issues were raised in the Office Action.

I. GENERAL CONSIDERATIONS

a. claim amendments and/or cancellations

Applicants note that while various claims have been amended and canceled during the prosecution of this case, such amendments and cancellations have been made in the interest of expediting the allowance of this case. Notwithstanding, Applicants, may, on further consideration, determine that claims of broader scope than those now presented are supported. Accordingly, Applicants hereby reserve the right to file one or more continuing applications with claims broader in scope than the claims now presented.

Consistent with the points set forth above, Applicants submit that the claim amendments, claim cancellations or statements advanced by the Applicants in this or any related case, constitute or should be construed as, an implicit or explicit surrender or disclaimer of claim scope with respect to the cited, or any other, references.

b. remarks

Applicants respectfully note that the remarks herein do not constitute, nor are they intended to be, an exhaustive enumeration of the patentable distinctions between any cited references and the invention, example embodiments of which are set forth in the claims of this application. Rather, and in consideration of the fact that various factors make it impractical to enumerate all the patentable distinctions between the invention and the cited art, as well as the fact that the Applicants have broad discretion in terms of the identification and consideration of the base(s) upon which the claims distinguish over the cited references, the distinctions identified and discussed herein are presented solely by way of example. Consistent with the foregoing, the discussion herein is not intended, and should not be construed, to prejudice or foreclose contemporaneous or future consideration by the Applicants, in this case or any other, of:

additional or alternative distinctions between the invention and the cited references; and/or, the merits of additional or alternative arguments.

Applicants note as well that the remarks, or a lack of remarks, set forth herein are not intended to constitute, and should not be construed as, an acquiescence, on the part of the Applicants: as to the purported teachings or prior art status of the cited references; as to the characterization of the cited references advanced by the Examiner; or as to any other assertions, allegations or characterizations made by the Examiner at any time in this case. Applicants reserve the right to challenge the purported teachings and purported prior art status of the cited references at any appropriate time.

II. CLAIM REJECTIONS UNDER 35 U.S.C. §112

The Examiner has rejected claims 1-5, 7-11 and 27-28 under 35 U.S.C. § 112, first paragraph as allegedly failing to comply with the written description requirement. Particularly, the Examiner has alleged that the specification lacks support for the amendments to claims 1 and 8 (made in Applicants' May 23, 2008 paper) stating that the attenuation layer is "in the form of a single layer." Applicants respectfully disagree.

Applicants note that paragraph [0043] clearly states "In this exemplary embodiment, the guest host electrolyte and electrochromic compounds are mixed together and applied as a single attenuation layer 116." Emphasis added.

In view of the clear support in the disclosure for the aforementioned amendments to claims 1 and 8, Applicants submit that the rejection of the Examiner is not well taken and should be withdrawn.

III. CLAIM REJECTIONS UNDER 35 U.S.C. §102(b)

Applicants respectfully note that a claim is anticipated under 35 U.S.C. § 102(b) only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Further, the identical invention must be shown in as complete detail as is contained in the claim. Finally, the elements must be arranged as required by the claim. *MPEP* § 2131.

The Examiner rejected claims 1-5, 7-11 and 27-28 under 35 U.S.C. § 102(b) as being anticipated by United States Patent No. 6,193,378 to Tonar et al. ("*Tonar*"). For at least the reasons set forth below, Applicants respectfully disagree.

The Examiner has alleged, with respect to the recitation in claims 1 and 8 of a "solid" attenuation layer, that the *Tonar* layer is "...solid with the materials incorporated into a polymeric matrix (col. 4, lines 36-45, for instance). Such materials are in solid solution and, accordingly, meet the present claims." Office Action at 3. Emphasis added. Applicants note initially that it is unclear what the Examiner means by "solid solution." Moreover, the Examiner has failed to present any rationale or analysis as to how a "solid solution," whatever it may be, anticipates the "solid" attenuation layer recited in the claims. For these reasons, at least, the rejection lacks an adequate basis. The rejection is problematic for other reasons as well.

For example, it appears that the Examiner has taken the passage at col. 4, lines 36-45 of *Tonar* out of context. Particularly, that passage refers to "the polymer matrix" (emphasis added). Earlier, under the same sub-heading (i) however, *Tonar* refers to a "continuous solution phase of a cross-linked polymer matrix." Col. 4, lines 12-13. As presently understood, "the polymer matrix" recited at line 38 refers to the previously recited "continuous solution phase of a cross-linked polymer matrix" (col. 4, lines 12-13). Thus, this disclosure would seem to contradict the allegation of the Examiner that *Tonar* discloses a "solid layer" such as is recited in the claims.

In fact, it appears that the sole basis for the reliance of the Examiner on col. 4, lines 36-45 of *Tonar* is that such passage recites an application title that includes the word "solid." Applicants respectfully submit, however, that the Examiner must provide evidence significantly more substantial than mere application titles to establish anticipation of the claimed invention.

By way of illustration, the mere fact that the cited passage includes an application title reciting the word "solid" is plainly inadequate to establish that the identical invention is shown in *Tonar* in as complete detail as is contained in the rejected claims, or that the elements recited in *Tonar* are arranged as required by the claim.

For at least the reasons set forth above, Applicants respectfully submit that the Examiner has failed to establish that *Tonar* anticipates claims 1-5, 7-11 and 27-28, and the rejection of those claims should accordingly be withdrawn.

IV. FEE PAYMENT

The Commissioner is hereby authorized to charge payment of any of the following fees that may be applicable to this communication, or credit any overpayment, to Deposit Account No. 23-3178: (1) any filing fees required under 37 CFR § 1.16; (2) any patent application and reexamination processing fees under 37 CFR § 1.17; and/or (3) any post issuance fees under 37 CFR § 1.20. In addition, if any additional extension of time is required, which has not otherwise been requested, please consider this a petition therefor and charge any additional fees that may be required to Deposit Account No. 23-3178.

CONCLUSION

In view of the foregoing, Applicants respectfully submit that each of the claims 1-5, 7-11 and 27-28 now pending in this application is in condition for allowance. Therefore, reconsideration of the rejections is requested and allowance of those claims is respectfully solicited. In the event that the Examiner finds any remaining impediment to a prompt allowance of this application that could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate the same with the undersigned attorney.

Dated this 30th day of September, 2008.

Respectfully submitted,

/Peter F. Malen, Jr./Reg.# 45576

Peter F. Malen, Jr.
Attorney for Applicants
Registration No. 45,576
Customer No. 022913
Telephone No. (801) 533-9800

PFM:msm
C:\NrPortbl\DMS1\PMALEN\2117987_1.DOC